IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4415 of 1988

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K.R. MODHIA - Petitioner(s)

Versus

D.H.AMBAWANI & 3 - Respondent(s)

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Appearance :

MR SM GOHIL for MR PM RAVAL for Petitioner(s) : 1,
MR ARUN H MEHTA for Respondent(s) : 1, 3,
MR MRUGESH JANI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
SERVED BY RPAD - (R) for Respondent(s) : 4,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 06/10/2005

ORAL JUDGMENT

The petitioner, a former employee of the respondent – Central Bank of India (hereinafter referred to as, **“the**

Bank”), challenges the order of punishment dated 20th November, 1986 made by the disciplinary authority and the order dated 14th July, 1987 made by the appellate authority.

A disciplinary proceeding was initiated against the petitioner, then a Branch Manager at Katwara Branch, for the acts of commission and omission stated in the memorandum of charge dated 11th May, 1983. It was alleged that the petitioner, while functioning as Branch Manager, Katwara Branch had, connived with one Ramabhai Damor, a Member of Taluka Panchayat, Dohad and one Fatehsinh Hada, a resident of Katwara and Talati of Lilar, sanctioned loans under IRDP Scheme in the names of fictitious persons and misappropriated the amount of Government subsidy. The petitioner did not submit reply to the said charge-sheet. Instead, he preferred Special Civil Application No.5113/1984 before this Court. The petitioner challenged the action of the disciplinary authority in refusing to furnish the documents the petitioner had asked for by his letter dated 7th July, 1983 and for a direction to allow the petitioner to have the legal assistance through an advocate of his choice. The said petition was disposed of on 29th August, 1985

(Coram: S.A.Shah, J.). It was directed that, **"(1) Presenting Officer appointed will not be the Law-Degree holder. (2) The petitioner will be permitted to file his defence statement on or before 17-9-1985. (3) The Bank will give copies of the documents on which it relies to the petitioner at least on the date fixed for production of documents, and the petitioner will be at liberty to file a further written statement within five days thereafter."**

Pursuant to the said order the petitioner submitted his defence statement on 16th September, 1985 but thereafter avoided to remain present in the inquiry proceeding. The petitioner also gave to the Inquiry Officer an application to appoint one Shri Bhaskar Tripathi, an officer of the Bank as his defence representative. In the alternative, he asked for permission to be represented by an advocate Shri B.M.Brahmbhatt. The request for representation through the advocate was rejected. Since then, at the request of the petitioner further time for inspection of documents and preparation of defence statement was granted. Nevertheless, the petitioner did not file defence statement. Instead, went on asking for adjournments on

the ground he was suffering from enteric fever and a mental disorder. As the petitioner did not participate in the inquiry proceeding the inquiry was conducted ex-parte against the petitioner. The Inquiry Officer found the petitioner guilty of the charges levelled against him. Pursuant to the said finding recorded by the Inquiry Officer and accepted by the disciplinary authority, by order dated 20th November, 1986 made by the disciplinary authority the petitioner was ordered to be dismissed from service. Feeling aggrieved, the petitioner preferred appeal before the appellate authority which came to be dismissed by the impugned order dated 14th July, 1987.

In course of preliminary inquiry on 5th February, 1983 the petitioner had, before the officers of the Bank and the Vigilance Officer, admitted the alleged acts of commission and omission.

Mr.Gohil has assailed the order of punishment made against the petitioner. He has submitted that the inquiry proceeding held against the petitioner is ex-facie bad and illegal and contrary to the principles of natural justice and fair play. He has submitted that the petitioner was denied adequate opportunity of defence. In

holding the petitioner guilty the disciplinary authority relied upon the statement dated 5th February, 1983 allegedly an admission made by the petitioner before the officers of the Bank and the Vigilance Officer. He has submitted that the said admission was procured by the Bank under duress. Immediately after recording of the said statement the petitioner notified the said fact to the Bank and stated that the same was not the statement voluntarily given by the petitioner. Mr.Gohil has submitted that in absence of the admission dated 5th February, 1983 there was no other evidence against the petitioner. The Bank could not have relied upon the said statement dated 5th February, 1983. In absence of any other material the Bank could not have held the petitioner guilty. He has also submitted that the petitioner had asked for assistance of one Bhaskar Tripathi, an officer of the Bank, which too was not granted. Thus, in the submission of Mr.Gohil the inquiry proceeding is vitiated. Consequently, the order of punishment and the appellate order both are required to be quashed and set-aside. He has also submitted that the Bank failed to furnish copy of the inquiry report to the petitioner. The inquiry held against the petitioner is vitiated on that ground also. He has submitted that the

conduct of the Bank also speaks volumes about the ulterior intention of the Bank. The Bank first refused to furnish any document to the petitioner until the above referred order dated 29th August, 1985 was made by this Court. After furnishing the relevant documents pursuant to the direction issued by this Court though the petitioner was suffering from mental and physical disorder he was not accommodated and the inquiry had proceeded against him ex-parte. He has submitted that in absence of the report of the Inquiry Officer the petitioner could not effectively challenge the order of punishment before the appellate authority. The order of the appellate authority is also vitiated.

Mr.Gohil has not pointed out any rule of the Bank under which the petitioner was entitled to receive copy of the inquiry report before the order of punishment was made against the petitioner. In absence of an express rule of the Bank, in view of the judgment of the Hon'ble Supreme Court in the matter of **Managing Director, ECIL, Hyderabad v/s. B.Karunakar** [AIR 1994 SC 1074] the order of punishment made on 20th January, 1986 shall not be vitiated on the ground that the inquiry report was not furnished to the petitioner before the order of

punishment was made. It is not even the case of the petitioner that the petitioner's defence was in any manner adversely affected for want of copy of the report of the Inquiry Officer. It is also not true that the petitioner was not given the order of the Inquiry Officer as alleged. The Bank has, along with the counter affidavit, produced communication dated 22nd November, 1986. Under the said communication the petitioner was served the order of punishment as well as the report of the Inquiry Officer.

As to the appointment of the above referred Shri Bhaskar Tripathi also, I am unable to agree with Mr.Gohil that the petitioner was deprived of the opportunity of representation through a next friend. It is evident that the petitioner applied to the Inquiry Officer to appoint the aforesaid Shri Bhaskar Tripathi to defend the petitioner in the inquiry proceeding. The said request was turned down by the Inquiry Officer. Indisputably, it is not the Inquiry Officer who is empowered or obliged to appoint a next friend for the defence of a delinquent servant. It is the delinquent servant who is required to select his next friend and to apply for permission for representation by such next friend. In the present case,

the petitioner did not appoint the said Shri Bhaskar Tripathi or any other person to be his next friend. The question of permitting the petitioner to be represented by a next friend, therefore, did not arise. The request for representation by a legal practitioner was not granted by this Court under the above-referred order dated 29th August, 1985. It has also come on record that the petitioner was not debilitated by any physical or mental disorder. It further appears that the petitioner was malingering with a view to avoiding the departmental proceeding.

No other contention is raised before me. Considering the gravity of the proved acts of commission and omission committed by the petitioner the order of punishment of dismissal from service imposed upon the petitioner was neither harsh nor excessive. The petition is devoid of any merit. The petition is dismissed with cost. Rule is discharged.

(Ms. R.M.Doshit, J.)

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